

Board of Adjustment
Minutes
May 16, 2017

Meeting was called to order at 5:04 p.m. by Chairperson Moe Richardson. Those in attendance: Board members Moe Richardson, Lori Boren, Gary Ulch and Roch Player. Also in attendance: Zoning Administrator, Matt Siders, Dick and Deb George and Steve Gollobit.

1. Approval of Agenda. Motion made by Roch, seconded by Boren to approve agenda. Carried all.
2. Approval of minutes from May 2, 2017. Motion made by Boren, seconded by Ulch to approve minutes. Carried all.
3. Public Hearing and discussion and possible action on request for a Conditional Use Permit for solar panels at 509 1st Street NE. Siders explained that the George family was seeking a Conditional Use Permit for 22 solar panels to go on the roof of the house. Siders had asked the contractor to provide some additional information. Planning and Zoning, as part of their recommendation of approval, had asked that the panels not be too high and would be low reflective. The information from the contractor indicated that the panels would be elevated four inches off the roof but lay flat on the roof pitch. The panels are also low reflective. Siders also explained that the reason this requires a Conditional Use Permit is that it is an “alternative energy device” according to Table 4-2 of the Mount Vernon Zoning Ordinance on page 4-12. Player made a motion to approve the Conditional Use Permit for the installation of solar panels at 509 1st Street NE in Mount Vernon. Seconded by Ulch. Carried all.
4. Discussion and possible action on the decision by City Council to remand the variance granted for 780 Lisbon Road NW (garage) back to Board of Adjustment for consideration. Richardson stated that he was at the City Council meeting last night where this was discussed. He had gone over the property and interviewed the property owner behind this applicant’s house. He said his initial reaction was that this should be approved because there isn’t really anyone around that could see it. He said after last night’s meeting he realized that there are people that care about this and the 4 feet (no matter what it backs up to) is a deviation from law and the ordinance. He learned that the Board of Adjustment is supposed to observe this more closely than they have. He has been on the board for three or four years and wasn’t really trained to appreciate that. It is the hardship that stops Board of Adjustment from granting a variance and there needs to be a severe hardship to grant these variances. Ulch said the fact that the house being built in 1895, before there was a zoning

ordinance, makes it hard to comply with today's standards and feels this is the hardship. Richardson agreed but stated that there needs to be a severe hardship and this particular garage (32 x 56) could be moved or made smaller. This is an inconvenience but not a hardship. Steve Gollobit understands about the hardship but feels it is a matter of opinion as to what that hardship is. He said it doesn't make sense to build a garage that he is not able to store everything that it needs to. Richardson asked about moving it to the front of the house and Gollobit said it wouldn't look right. Richardson stated that aesthetics is not something that the board can rule on. Boren asked if it was possible to shift the garage a different direction so that it comes to the side of the driveway. Gollobit said because of the slope of the land it is not possible to do that. Player read the hardship requirement for granting a variance (The granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice.) He said this would be considered a convenience. Boren felt with the breezeway attached it would not look bad and does not see why it can't be shifted a few feet forward. This is why she doesn't see a hardship. Richardson said there was a statement made at the Council meeting last night that a garage never justifies a hardship and a variance.

Siders explained that City Council has remanded the decision back to Board of Adjustment to reconsider and look at it again. Boren stated that the board could vote in favor of it again tonight if they chose to do so. Richardson said that according to the City Administrator and City Council last night, if the board did vote in favor of it again, they would go to the district court and initiate a lawsuit against Board of Adjustment. Player said he is not afraid of a lawsuit, he just wants to do what is right. Ulch said basically what he heard is that the board is being threatened by two members, the City Administrator and a Council member, that if they didn't change their opinion and deny the variance, they will take the board to court. Ulch said there are two people in the whole community that don't think the board made the right decision. Richardson stated that he had changed his mind and doesn't feel that there is a hardship there. Ulch feels that the hardship is the age of the house and it was there long before the zoning ordinance began. Player said this doesn't have anything to do with an addition to the home and said if the applicant had an existing garage that didn't meet the setbacks and it needed to be replaced with something in kind, he would see that as a hardship because he would be losing a garage that he has been dependent upon. Boren said that bottom line is the applicant could still move the garage forward and have it the exact size he wants it to be and that is why there is no hardship.

Richardson made a motion to deny the application for a variance to build a garage at 780 Lisbon Road NW that would be 31 feet instead of 35 feet from

the back property line. Richardson's motion seconded by Ulch. Those in favor of the motion to deny the variance: Richardson, Player and Boren. Those opposed: Ulch.

5. Discussion and possible action on the process of selection of board officers. Siders shared some wording that he felt would be appropriate to add to the Board of Adjustment duties in regards to selection of officers. The wording was as follows: "The Board of Adjustment shall choose annually at its first regular meeting, one of its members to act as Chairperson and another as Vice Chairperson, who shall perform all the duties of the Chairperson during the Chairperson's absence or disability". Ulch asked if it was the responsibility of the Board of Adjustment to make their own rules or would it be the City Council that appoints the members? Siders said that Planning and Zoning made their own by-laws. Boren asked if the City Attorney should be available for guidance on this. Player liked the language that was presented and suggested it be forwarded on to City Council. Boren made a motion to approve the language of processing and selection of board officers and send to City Council, with the addition of adding the wording "bi-annually (every two years)" instead of annually. Player seconded the motion. Carried all.

Meeting adjourned at 5:46 p.m. with the unanimous consent of the board on May 16, 2017.

Respectfully submitted,
Marsha Dewell
Deputy Clerk